

**MINUTES**  
**ENVIRONMENTAL REVIEW COMMISSION**  
**December 14, 2011**

The Environmental Review Commission (ERC or Commission) met on Wednesday, December 14, 2011 at 8:30 a.m. in Room 544 of the Legislative Office Building. Senator Rouzer presided.

The following members were present: Senator David Rouzer, Co-Chair, Representative Mitch Gillespie, Co-Chair, Representative Ruth Samuelson, Co-Chair, Senator Stan Bingham, Senator Don East, Senator Fletcher Hartsell, Senator Brent Jackson, Senator Bill Rabon, Senator Michael Walters, Representative William Brisson, Representative Joe Hackney, Representative Chuck McGrady and Representative Roger West. Mr. Jeff Hudson, Ms. Jennifer McGinnis and Susan Iddings, Commission Counsels; Ms. Jennifer Mundt and Ms. Mariah Matheson, Research Assistants; Ms. Sarah Neunzig, Commission Clerk, Sergeants-at-Arms Jim Blackburn, John Brandon, Larry Elliot, John Fitchett and Martha Gaddison also attended. Attachments #1 and #2.

On December 7, 2011, notice was sent to members and interested parties via e-mail. An additional reminder e-mail was sent on December 13, 2011. A copy of the notice is included in the attachments to these minutes as Attachments #3 and #4. Copies of the agenda for the meeting, visitor registration sheets and memorandum regarding the disposition of reports are included in the attachments to these minutes as Attachments #5, #6 and #7 respectively.

**Call to order and introductory remarks**

Senator Rouzer called the meeting to order and welcomed members, staff, and visitors in attendance. He recognized his Co-Chairs, Representative Gillespie and Representative Samuelson, for introductory remarks. Senator Rouzer recognized Mr. Jeff Hudson, Commission Counsel, to provide an overview of the meeting agenda. Mr. Hudson explained that the agenda consisted of (i) housekeeping matters encompassing the approval of previous meeting minutes and Commission budget, (ii) presentations on the North Carolina Parks and Conservation Matters, (iii) presentations from the Department of Environment and Natural Resources (DENR) on vegetative buffers for the protection of water quality and the use of ecological flow in hydrologic modeling and (iv) the tentative schedule for 2012 meetings of the Commission.

**Approval of the minutes for the October 12, 2011 meeting of the Commission**

Representative McGrady offered a motion to approve the minutes, Senator Walters seconded the motion. The Commission as a whole approved the October 12, 2011 minutes; Attachment #7.

**Adoption of the Commission budget**

Representative McGrady offered a motion to approve the Commission budget, Representative Samuelson seconded the motion. The Commission as a whole approved the Commission's budget; Attachment #8.

**Presentations on Parks and Conservation Matters**

**Parks and Recreation Trust Fund**

Senator Rouzer recognized Mr. Lewis Ledford, Director of the Division of Parks and Recreation of DENR to present the annual report on the Parks and Recreation Trust Fund. A copy of the presentation is included in the attachments to these minutes as Attachment #9, the annual report for 2010-2011 as Attachment #10 and the 2011 annual report as Attachment #11.

Representative Samuelson asked about the four dollar per capita funding that puts North Carolina at 45<sup>th</sup> in the United States for funding its State Park System. She asked Mr. Ledford for a comparison on a national stage regarding state park systems, and asked if there was anything the State needed to do to acquire a higher ranking regarding funding. Mr. Ledford responded, North Carolina's main strength in the State Park System is the local projects for small communities, which the Trust Fund enables. Other states such as Alabama and West Virginia have a more resort-type atmosphere IN their state parks. It is very expensive to attain a resort atmosphere by doing such things as building lodges on site, and thereby increases these states per capita funding rankings compared to North Carolina. North Carolina State Parks retain a natural atmosphere.

Senator Bingham asked about the COPS program and asked what is the respective interest rate payback period. Mr. Ledford responded the State Treasurer secured the rate many years ago along with university bonds, but he is unsure of the exact interest rate. He did confirm a payback period of 20 years.

Senator East asked about the maintenance of State Parks utilities. Mr. Ledford responded that the State Park System has tried to tie into the local municipalities if possible for more efficient utilities. It is an ongoing process to negotiate ways to tie certain utilities to the town, such as water and sewer systems.

Commission was then shown a video about the State Park System.

### **North Carolina Natural Heritage Trust Fund**

Senator Rouzer recognized Ms. Lisa Riegel, Executive Director of the North Carolina Natural Heritage Trust Fund to present the annual report on awards from the North Carolina Natural Heritage Trust Fund. A copy of the presentation is included in the attachments to these minutes as Attachment #12 and #13.

Senator East asked how she arrived at the estimate that the income of the Trust Fund for the current year will equal the income for next year with the continued decline in the real estate market and the income that comes from the real estate transfer tax. Ms. Riegel referenced a graph trend that is tracking on target, this resulted in her forecasting the value of \$8 million for next year.

Senator East then asked fiscal staff what percent of the real estate transfer tax is allocated to the Trust Fund. Lanier McGree from the Fiscal Research Division responded that she does not know the amount of the real estate conveyance tax, but the State portion of the tax breakdown is 75% to the Parks and Recreation Trust Fund and 25% to the Natural Heritage Trust Fund. The State gets approximately 50% of the real estate conveyance tax. She will follow up with the Commission for the exact amount the State gets and the exact real estate conveyance tax.

Representative Samuelson asked Katy Thomas from the NC Association of Realtors to respond. She answered that the real estate transfer tax is \$2 per every \$1,000 in a real estate transaction. Fifty percent of that goes to the counties and the other 50% goes to the two trust funds, which are split 75% for the Parks and Recreation Trust Fund and 25% for the Natural Heritage Trust Fund.

Senator Bingham asked if the public can visit the Arnett Branch Long Leaf Pine Forest. Ms. Riegel assured him that the public can visit and it will be managed through the NC Zoo.

Senator Bingham also asked about federal grants, aside from those from the US military, and wanted to know what conditions were tied to those grants. Ms. Riegel responded in most areas federal grants are focused on preserving the natural habitat and the grant funds are used for purposes similar to those of the Parks and Recreation Trust Fund.

Senator Bingham asked if there is a close relationship between the Boards of the two Trust Funds. Ms. Riegel assured him that there is a very close relationship and lots of regular communication; over the past few years this has proven very successful.

Senator Rouzer asked how many projects are funded through COPS dollars. Ms. Riegel responded that she knows the dollar amount but she doesn't know the number of projects. She will report back to him with that answer. He then asked if there were any projects where dollars were allocated yet the project was not finished. She responded that one project did fall through, and the funds need to be reallocated. Senator Rouzer asked about the process for reallocation. She responded that there will be a meeting to evaluate other projects and then reallocate funds in the standard manner by allowing all applicants the chance to submit projects and apply for the Trust Funds.

#### **Clean Water Management Trust Fund**

Senator Rouzer recognized Mr. Richard Rogers, Jr., Executive Director of the Clean Water Management Trust Fund. He presented the annual report on the implementation of the Clean Water Management Trust Fund. A copy of the presentation is included in the attachments to these minutes as Attachment #14, the 2011 annual report as Attachment #15, and a list of projects not funded in the 2011 awards cycle as Attachment #16.

Representative Samuelson asked about the number of applications in 2011 and how applications for that number compares to past years. Mr. Rogers responded that two years ago there was a high: \$249 million applications. In 2011 there were applications for more than \$157 million. The numbers are down from two years ago as a reflection to the reduction of funding to the Clean Water Management Trust Fund. The distribution of awards remains about the same: 5% of the land acquisition and 5% for infrastructure. The demographics of the types of applications are the same.

Representative Samuelson asked about the matching portion and who is matching the dollars. Mr. Rogers answered that the majority of the matching funds comes from the federal state revolving funds. Typically loan funds are paid off over the next 20-30 years with their fees.

Senator Rabon asked if he could see in one document all the land and the two trust funds own in order to determine whether the trust funds can be consolidated. Mr. Rogers said that can be done and provided to his office.

Senator Bingham asked if cities come to you to get assistance when filling out applications. Mr. Rogers responded, the large municipalities have staff to assist, and smaller municipalities usually hire someone to help. His staff is required by the Trustees to help applicants fill out the document in an effort for applicants to receive the help they might need.

#### **North Carolina Development and Farmland Preservation Trust Fund Committee**

Senator Rouzer recognized Mr. Dewitt Hardee, Environmental Program Manager for the Department of Agriculture and Consumer Services. A copy of the presentation is included in the attachments to these minutes as Attachment #17 and the 2010-2011 annual report as Attachment #18.

Senator East asked staff to compare what amount of monies were returned to the General Fund for the State budget from the Agricultural Development and Farmland Preservation Trust Fund (ADFPTS) versus others in the State. Mr. Dewitt responded that the ADFPTS was appropriated \$2 million for the 2010-2011 fiscal year. That same year, \$2,173,989 was returned at the request of the Office of State Budget and Management to help balance the budget. Fiscal Research Staff Lanier McGee responded that the Clean Water Management Trust Fund returned over \$100 million and the Natural Heritage Trust Fund and the Parks and Recreation Trust Fund were also used by the legislature to balance the budget in the amount of \$8 million each. She will report a complete history of those budget reversions to the Commission.

#### **Update on Land for Tomorrow**

Senator Rouzer recognized Mr. Tom Cors, Director of Government Relations for The Nature Conservancy, North Carolina Chapter. A copy of the presentation, and update on Land for Tomorrow, is included in the attachments to these minutes as Attachment #19. Land for Tomorrow is a partnership of citizens, businesses, and interest groups that support and promote the four conservation trust funds reported here today.

Representative Samuelson asked if there is redundancy among these four trust funds and how the trust funds work together. Mr. Cors answered, the different agencies complement each other because each trust fund addresses different issues within conservation to specifically address a direct constituency.

#### **Presentation on the use of vegetative buffers for the protection of water quality**

Senator Rouzer recognized Ms. Coleen Sullins, Director of the Division of Water Quality in DENR. A copy of the presentation is included in the attachments to these minutes as Attachment #20.

Senator Rouzer asked if soil type makes a difference in buffers; clay versus sandy soil. Ms. Sullins does not know that but can get an answer later.

Representative Samuelson asked if these studies looked at the different types of plants in the buffers such as grasses versus trees. Ms. Sullins responded the studies did look into differing plant types and found that trees are important in de-nitrifying the water as it moves through the soil. Trees have a deeper root base than grasses and the studies specifically looked at that and found a much higher activity level in the buffers with trees than grasses.

Representative McGrady asked how protecting existing buffers compare with other pollution control strategies in terms of cost effectiveness and effectiveness in protecting water quality. Ms. Sullins responded that existing buffers are the least expensive approaches; if removed, you must build structures to treat the stormwater run-off and then maintain those structures over their lifetime, which would prove to be more expensive.

Representative McGrady asked how buffers can add or detract from land values. Ms. Sullins responded that she is not aware of any research that has been done in North Carolina, but she will ask

her staff to look into that as there have been academic studies done in other states. He then asked if there has been any negative impact on property values found in these reports. She answered that data shows good water quality has a significant positive effect on property value, but no information has been found regarding the buffers hindering property value. In general, good water quality improves land values.

Representative Samuelson asked about the 1995/1996 incident regarding fish kills and algal blooms due to excessive nitrogen in The Neuse River and if anything was special to those years to cause it. Ms. Sullins responded that the system is affected by wet and dry weather. In 1995 there was a dry spring season followed by a very wet June, which caused lots of nutrients to be flushed into the system. Her staff is continuing to look into that issue to learn more, but there is a linkage between wet weather and nutrients being washed into the water system.

### **Presentation on the use of ecological flow in hydrologic modeling**

Senator Rouzer recognized Mr. Thomas Reeder, Director of the Division of Water Resources in DENR. A copy of the presentation is included in the attachments to these minutes as Attachment #21.

Representative Samuelson asked what role, if any, do prior things that were done to waterways effect ecological flow in the present. Mr. Reeder stated that whatever is in place now will stay and they will work with it. Representative Samuelson then asked about invasive species and if they will try to preserve those as well. Mr. Reeder mentioned that when they spray invasive species to remove them, they only spray the plants that are not native to North Carolina.

Representative Samuelson asked Mr. Reeder to explain 7Q10 and what it means. Mr. Reeder explained it is a hydrologic standard that applies when dealing with wastewater discharge permits. 7Q10 is the low flow one can expect for 7-10 days once every ten years. It is a very low flow that is not suited for the long term survival of rivers.

Senator Rabon asked about inter-basin transfers and the rules used to treat these in the various counties and what suggestions Mr. Reeder can offer. Mr. Reeder responded that this program is created by the General Assembly because it is for North Carolina only, not federally mandated. He believes NC has the most stringent program in the country.

### **Commission discussion and announcements**

Senator Hartsell informed the Commission that he had submitted a letter to Attorney General Roy Cooper seeking an Attorney General opinion concerning the ownership of the submerged bed of the Yadkin River at the site of the Yadkin Hydroelectric Project. He stated today, he has not received a response from the Attorney General and would like to submit the motion to intervene submitted by the Attorney General on behalf of DENR in the Yadkin Hydroelectric Project reauthorization. The basis for intervention stated in the motion is that the State retains title to navigable waters under the public trust doctrine and that the navigable waters themselves are a public resource. This is important to determine who has control of the surface waters and the ecological flows of a river basin. The motion is included in the minutes as Attachment #22.

Senator Rouzer thanked the members and staff, and announced the next meetings to be held would be Thursday, January 26, 2012, at 9:00 a.m. in room 643 LOB. The dates and times are subject to change and notice will be given if they change.

**Adjournment**

The meeting was adjourned at 11:35 am.

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Co-Chair Senator David Rouzer

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Co-Chair Representative Mitch Gillespie

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Co-Chair Representative Ruth Samuelson

Attest:

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Sarah Neunzig, Committee Clerk